GB CHRON

10.E.2.b(2)

Turkey II

BEFORE THE
DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

In re Application of	:	
The Government of TURKEY	:	BZA APPLICATION No. 15427
To Expand a Chancery at 2523 Massachusetts Ave. N.W. (Square 2505, Lots 15, 16, and 17).	:	HPRB Hearing Date: December 5, 1990
	:	

OBJECTION OF
U.S. DEPARTMENT OF STATE
TO JURISDICTION OF THE HISTORIC PRESERVATION REVIEW BOARD TO CONDUCT A HEARING

The Government of Turkey has made application before the Board of Zoning Adjustment for the District of Columbia, performing functions pursuant to section 206 of the Foreign Missions Act (22 U.S.C. sec. 4306) ("FM-BZA"), to expand a chancery at 2523 Massachusetts Avenue, N.W. (Square 2505, Lots 15, 16 and 17) in the Massachusetts Avenue Historic District. The application is made under section 206 (b)(2)(B) of the Foreign Missions Act ("FMA" or Act") (22 U.S.C. § 4306 (B)(2)(b)).

FM-BZA referred the application to the Historic Preservation Review Board (HPRB), requesting advice with

respect to certain historic preservation issues set forth in a letter dated September 25, 1990.

The HPRB is without jurisdiction to conduct a public hearing or any other proceeding in connection with the application of the Republic of Turkey for the expansion of a chancery pursuant to section 206(b)(2)(B) of the FMA. The language of the statute, its legislative history, and controlling appellate case law compel the conclusion that only the FM-BZA may conduct "administrative proceedings" relating to the location, expansion, or replacement of a chancery.

Section 206(c)(3) of the FMA provides that a determination by the FM-BZA "shall not be subject to the administrative proceedings of any other agency or official except as provided in [the FMA]". The FMA makes no provision for the conduct of a hearing by the Historic Preservation Review Board.

The governing statute enunciates, therefore, the exclusive and preclusive authority of the FM-BZA to entertain and decide chancery location applications. Subsections 206(a) and 206 (j) of the Act are in accord. These provisions, which address the role of other agencies and laws, express the primacy of the Foreign Missions Act and make no reference to proceedings before the HPRB.

Additionally, section 206(d)(2) of the Foreign Missions Act specifically addresses the issue of historic preservation. It expressly states that the criteria or factor of historic preservation shall be:

> ...determined by the Board of Zoning Adjustment in carrying out this section; and in order to insure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and Federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks. (Emphasis added.)

Where, as here, several federal and District agencies, such as the HPRB, are vested with responsibility under law for the review of historic preservation applications under certain circumstances, the Congress made clear in section 206 that the FM-BZA is the exclusive agency to conduct proceedings addressing the historic preservation implications of an application made by a chancery.

The legislative history of the FHA elaborates the rationale for the exclusivity of "proceedings" before the FM-BZA.

Because decisions on chancery applications have a direct effort on our foreign relations and on the status of U.S. embassy projects abroad, the Congress created an approval procedure within the District that "is intended to insure an expeditious process which will avoid the extensive and overlapping proceedings which are required under existing law and regulations." H.R. Conf. Rep. No. 97-693, 97th Cong., 2d Sess. 41, reprinted in 1982 U.S. Code Cong. & Ad. News 691, at 700.

In enacting section 206(d), Congress sought to avoid a process whereby chancery zoning applications are made subject to duplicative and time-consuming proceedings of several agencies or officials, each requiring the presentation of identical or similar evidence. Yet this is precisely the result when a chancery's application is subject to hearings before the Mayor's Agent, and the HPRB, and possibly other agencies and officials to which a chancery application could logically be referred.

The District of Columbia Court of Appeals has clearly embraced the principle of the exclusivity of FMA proceedings. In Embassy of the People's Republic of Benin v. District of Columbia Board of Zoning Adjustment, 534 A. 2d 310 (1987), a unanimous court ruled that:

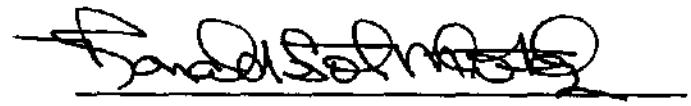
> The language of the FMA leaves little doubt that Congress wished to create a comprehensive scheme for the fair and expeditious decision of issues relating to foreign chanceries in the District of Columbia.
>
> ....
>
> ...Congress' intent [was] that the provisions of the FMA should exclusively govern the location and expansion of chanceries in the District. ... The FMA thus fully supplanted the previously-existing District of Columbia law regarding location and expansion of foreign missions. Id. at 316, 319-20 (emphasis supplied).

Beyond question, the Benin Court would look askance at any procedure whereby chanceries are compelled to marshall their evidence at a succession of administrative hearings. Rather, this parade of proceedings appears to be "just the sort of overlapping, drawnout proceedings that Congress sought to eliminate." Id. at 320.

The Department of State respects the need to regulate new construction in the nation's capital so as to preserve its historic character. The Department likewise recognizes that chanceries may be reasonably required to "substantially" conform their building designs in such a way as to insure compatibility with that character. 22 U.S.C. §4306(d)(2).

Accordingly, the Department interposes no objection to a referral by the FM-BZA of an application under section 206 for information or advice by an agency or official of the District of Columbia (or federal) government. However, such a referral cannot result in an "administrative proceeding", including a public hearing, in contravention of section 206(c)(3) of the FMA and in a manner inconsistent with applicable judicial precedent.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objection was sent this 4th day of December, 1990, by hand delivery to:

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and by facsimile transmission, this same day, to:

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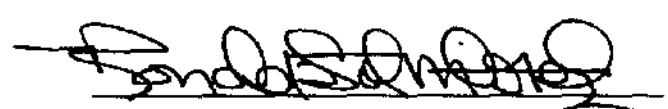

Ronald Sol Mlotek